

122 FERC ¶ 61,094
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Morgan Stanley

Docket Nos. EC07-45-000
EC07-45-001
EC07-45-002

ORDER ON CLARIFICATION

(Issued February 4, 2008)

1. On November 20, 2007, Morgan Stanley filed a request for clarification of the Commission's order issued in this docket.¹ For the reasons discussed herein, we grant the motion for clarification.

I. Background

2. The October 18 Order provided a detailed description of the background and history of this proceeding.² In brief, the October 18 Order granted Morgan Stanley's request on behalf of itself and certain of its non-utility affiliates (collectively, Applicants) for blanket authority under the Federal Power Act (FPA) section 203(a)(2),³ for a period of three years, to acquire any amount of voting securities of one or more utilities or holding companies in connection with Applicants' fiduciary holdings, dealer/trader activities, and lending activities. The blanket authorization was conditioned on, among other things, Morgan Stanley's representation that the acquired securities would not confer control on Morgan Stanley, and certain reporting requirements.

¹ *Morgan Stanley*, 121 FERC ¶ 61,060 (2007) (October 18 Order).

² *Id.* at P 4-26.

³ 16 U.S.C. § 824b(a)(2) (2000), *amended by* Energy Policy Act of 2005, Pub. L. No. 109-58, § 1289, 119 Stat. 594, 982-83 (2005) (EPAAct 2005).

II. Motion for Clarification

3. Morgan Stanley seeks clarification of the reporting requirements set forth in Ordering Paragraph (J). Specifically, Morgan Stanley requests the Commission to clarify that each of the reporting requirements is subject to a one percent *de minimis* threshold measured as of the quarter close per aggregation unit because that would conform with prior Commission orders and the Securities and Exchange Commission's (SEC) regime for filing Schedule 13G. Morgan Stanley states that the October 18 Order directs Morgan Stanley to file quarterly reports of its holdings as fiduciary and as market-maker,⁴ but it does not specify whether those reports are subject to the *de minimis* threshold as it does for voting securities held for liquidation and as principal. Morgan Stanley notes that Goldman Sachs received a section 203(a)(2) blanket authorization⁵ with quarterly filing requirements for similar holdings that are subject to the one percent *de minimis* threshold. Morgan Stanley argues that its reporting obligations should not be different than those of Goldman Sachs.

4. Morgan Stanley states that for purposes of SEC disclosures under 13G, it maintains aggregation units that report holdings separately. Morgan Stanley states that it follows SEC policies and procedures to ensure that its affiliates do not exercise aggregated voting powers without proper authorization and disclosure. Thus, Morgan Stanley argues that applying these policies and procedures to FPA section 203 reporting requirements would not diminish the protections served by the Commission's oversight of the non-controlling interest transactions at issue. Morgan Stanley contends that reporting to the Commission holdings aggregated across information barriers works at cross-purposes to the SEC's regime because it would require aggregation of holdings that are otherwise allowed to be reported separately. Morgan Stanley therefore seeks clarification that the reporting obligations apply to those aggregation units and not across them.

5. Further, Morgan Stanley asks for clarification that reporting is measured "as of the calendar quarter close" noting the language is comparable to that in the Goldman Order, which requires reporting of holdings for investment advisory services and mutual funds and private investment funds management services "as of the end of the quarter." Morgan Stanley also asks the Commission to clarify that reporting is measured as of the calendar quarter close as well.

III. Discussion

6. We grant Morgan Stanley's request for clarification that the one percent *de minimis* threshold applies to each of the reports of holdings of utility voting securities

⁴ October 18 Order, 121 FERC ¶ 61,060 at P 43, Ordering Paragraph (J).

⁵ *The Goldman Sachs Group, Inc.*, 121 FERC ¶ 61,059 (2007) (Goldman Order).

held as principal, as fiduciary, as market maker, and obtained through liquidation in connection with antecedent debt. We clarify that these reports shall be measured as of the calendar quarter close.

7. We also grant Morgan Stanley's request for clarification that it shall report its holdings of utility voting securities based on the three aggregation units: 1) Asset Management; 2) Sales and Trading; and, 3) Private Strategic Investments. As we stated in the October 18 Order, we rely on Morgan Stanley's representations that it follows established SEC guidelines regarding disaggregation of securities and that it maintains policies and procedures to assure compliance. Thus, we will allow Morgan Stanley to report its holdings of utility voting securities per aggregation unit.

8. Therefore, we will revise Ordering Paragraph (J) to read as follows:

(J) Morgan Stanley shall file with the Commission on a calendar quarterly basis, a report by aggregation unit separately identifying: (1) holdings of voting securities acquired and held as principal for its own account; (2) holdings as a result of liquidations; (3) holdings by a market-maker; (4) holdings as a fiduciary; and (5) total holdings of voting securities irrespective of the capacity in which such securities are held. Each report should list the holdings of the utility voting securities, stated in terms of the number of shares held and as a percentage of the outstanding shares. The reports for each category of holdings are due within 45 days of the close of the calendar quarter and are subject to a *de minimis* threshold of one percent.

9. In addition, we correct additional items in the Ordering Paragraphs. Specifically, in Ordering Paragraph (I), in the last sentence, insert "informational" after "Such." The last sentence is corrected to read as follows: "Such informational filings shall be made in this docket or in appropriate sub-dockets of this docket."

10. In Ordering Paragraph (K), after "must provide notice" insert "for informational purposes" and after "utility" insert a period and delete the remainder of the sentence. Further, in Ordering Paragraph (K), insert a sentence conforming reports by new entities to those filed under Ordering Paragraph (J). Thus, Ordering Paragraph (K) is corrected to read as follows:

If a new entity is to be covered by this blanket authorization, Morgan Stanley must provide notice, for informational purposes, in a report with the name, functions, and regulatory safeguards applicable to that entity, as well as a reiteration of Morgan Stanley's commitment not to acquire securities that will result in a transfer of control of a public utility. The reports for each category of holdings by any new entity shall be filed within

45 days of the close of the calendar quarter in which they are formed and otherwise made as specified in Ordering Paragraph (J).

11. In Ordering Paragraph (L), insert a period after “granting the request” and delete the remainder of the sentence. The sentence is corrected to read as follows: “Applicants must inform the Commission, within 30 days, of any material change in circumstances that would reflect a departure from the facts, policies, and procedures the Commission relied upon in granting the request.”

The Commission orders:

(A) The motion for clarification is granted.

(B) Ordering Paragraphs (I), (J), (K), and (L) are modified, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.